



CITY OF PHILADELPHIA

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GC-2008-523

Philadelphia Board of Ethics Nonpublic Advice of Counsel

October 9, 2008

Re: Application of Charter Section 10-107(3) to Council Employee

A City employee on the payroll of City Council requested advice as to the effect of Charter Section 10-107 on the employee's ability to participate in political fund-raising activities.

Scope of our advice

Please note that Section 20-606(1)(d)(ii) of The Philadelphia Code provides that: "Advisory opinions shall be issued only with respect to proposed future conduct or action by a City officer or employee." To the extent that the Board has separate authority under the Charter, there is similar applicable language in the Board's Regulation No. 4, at paragraph 4.1(d):

(d) **Advice on future conduct only.** Except as provided in paragraph (e) below, the Board or its staff shall only issue advice to a City officer or employee or a supervisor of such City officer or employee, or to a candidate, candidate political committee, or political committee with respect to the proposed future conduct or action of the subject whose conduct is at issue.

The Board's Regulation 8 (Political Activity), effective March 28, 2011, represents the Board's interpretation of Charter Section 10-107, and supersedes this advisory opinion to the extent that it is inconsistent with the regulation.

In keeping with the concept that an ethics advisory opinion is necessarily limited to the facts presented, such advice is predicated on the facts provided to the Board by the requestor. The Board does not conduct an independent inquiry into the facts. Although previous opinions of this office that interpret statutes are guidance to how this office will likely interpret the same provision in the future, previous opinions do not govern the application of the law to different facts. Ethics opinions are particularly fact-specific, and any official or employee wishing to be assured that his or her conduct falls within the permissible scope of the ethics laws is well-advised to seek and rely only on an opinion issued as to his or her specific situation, prior to acting. In that regard, to the extent that this opinion states general principles, and there are particular fact situations that the employee may be concerned about, the employee was encouraged to contact the Board for specific advice on the application of the ethics laws to those particular facts.

Analysis

The applicable statute is Section 10-107 of the Philadelphia Home Rule Charter. For this purpose, the relevant subsection of Section 10-107 is subsection (3), which provides as follows:

(3) No officer or employee of the City and no officer or employee of any governmental agency whose compensation is paid from the City Treasury shall, from any person, and no officer or member of a committee of any political party or club shall, from any civil service employee, directly or indirectly demand, solicit, collect or receive, or be in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever. No officer or member of the Philadelphia Police or of the Fire Department shall pay or give any money or valuable thing or make any subscription or contribution, whether voluntary or involuntary, for any political purpose whatever.

The first two annotations to Section 10-107 are as follows:

1. Merit principles of governmental employment require the divorcement of politics from such employment. They presuppose employment upon merit and not because of political connections, powers and pressures. They also presuppose that governmental employment will not serve as a means for political tribute to maintain political parties and regimes. The prohibitions of this section are intended to sustain these basic principles and precepts subject to certain qualifications which political

necessities require to be made at certain levels of employment and office-holding. Absolutism in this area is neither necessary nor practicable for the fact is that political parties are essential parts of the democratic form of government in the United States. This section attempts to balance the public interest involved.

2. All City officers, elected or appointed, and all City employees, civil service or non-civil service, and all officers and all employees of governmental agencies compensated with City funds, such as County officers and employees, are prohibited from demanding, soliciting, collecting or receiving from any person assessments, subscriptions or contributions for political purposes.

It is clear that Annotation #1 refers to Section 10-107 in general and Annotation #2 refers specifically to subsection 10-107(3). On its face, therefore, subsection 10-107(3) applies to all City employees, including those employed by City Council.¹

As noted in footnote 1, Opinion No. 51 of 1952 addresses the application of 10-107(3). In discussing the category of "officers and employees not in the civil service," Solicitor Freedman states:

In the opposite category from policemen and firemen are officers and employees not in the civil service. Such personnel also may not engage in the solicitation of political contributions.

Opinion No. 51, *1952 City Solicitor's Opinions* at 120 (emphasis added). Accordingly, the employee was advised that Charter subsection 10-107(3) restriction on political fundraising applies to him/her as an employee of City Council.

¹ Many in City government are aware of an Opinion issued by City Solicitor Abraham Freedman in 1952, Opinion No. 50, *1952 City Solicitor's Opinions* at 111. Opinion No. 50 explicitly addresses only subsection 10-107(4), and thus has no application to this request. I do not address, and express no opinion on, the viability, scope, or meaning of Opinion No. 50, other than to note that, by its own terms, it clearly does not address the application of subsection 10-107(3). Even more conclusive as to the reach of Opinion No. 50 is Opinion No. 51, the very next Opinion in that same book of Opinions, No. 51, *1952 City Solicitor's Opinions* at 117, and dated two weeks later. Like Opinion No. 50, Opinion No. 51 clearly relates only to one subsection of Section 10-107, in this case subsection (3). The practice of the Law Department in explicitly noting that Opinion No. 50 referred exclusively to subsection (4) has been continued in more recent Opinions. See, e.g., The Law Department Political Activity Guide, printed as "Opinion No. 95-20," *1994-1996 City Solicitor's Opinions* at 145; and Opinion No. 99-07, *1997-1999 City Solicitor's Opinions* at 331-332. Moreover, Opinion No. 93-6 states that subsection 10-107(3) applies to "any 'officer or employee of the City'." *1992-1993 City Solicitor's Opinions* at 268.

Conclusion

The employee was advised of the conclusion that Section 10-107(3) of the Philadelphia Home Rule Charter applies to him/her, as an employee of the City. Accordingly, the employee was advised that he/she is prohibited from being "in any manner concerned in demanding, soliciting, collecting or receiving, any assessment, subscription or contribution, whether voluntary or involuntary, intended for any political purpose whatever."

The requestor was advised that, since he/she requested nonpublic advice from the Board of Ethics, the original letter sent to the requestor will not be made public. The Board is, however, making public this revised version, edited to conceal the identity of the requestor, as required by Philadelphia Code Section 20-606(1)(d)(iii).

Evan Meyer
General Counsel

cc: Richard Glazer, Esq., Chair
J. Shane Creamer, Jr., Esq., Executive Director